# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914

No. [redacted] 382

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ELIE PORTALE AND JULIETTE PORTALE, ALIAS JULIETTE PUPPET, ALIAS MADAME JULIETTE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

**FILED MARCH 7, 1914.**

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1913.

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## No. 932.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ELIE PORTALE AND JULIETTE PORTALE, ALIAS JULIETTE PUPPET, ALIAS MADAME JULIETTE.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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INDEX.


| | Original. | Print. |
|---|---|---|
| Caption | 1 | 1 |
| Order filing indictment and for process to issue | 2 | 1 |
| Order transferring cause to Denver | 3 | 2 |
| Order for bail | 3 | 2 |
| Clerk's certificate to orders, etc | 4 | 2 |
| Indictment | 4 | 2 |
| Demurrer | 7 | 4 |
| Judgment | 10 | 5 |
| Assignment of errors | 11 | 6 |
| Bill of exceptions | 13 | 7 |
| Demurrer sustained | 14 | 7 |
| Judge's certificate | 15 | 8 |
| Petition for writ of error | 16 | 8 |
| Order allowing writ of error | 17 | 9 |
| Præcipe for transcript | 18 | 9 |
| Writ of error and return | 19 | 10 |
| Citation and service | 20 | 11 |
| Clerk's certificate to record | 21 | 12 |
| Opinion | 22 | 12 |
| Clerk's certificate to opinion | 25 | 14 |

1 *Pleas in the District Court of the United States for the District of Colorado sitting at Denver.*

Be it remembered that heretofore, and on, to wit, the twentieth day of December, A. D. 1913, there was filed in said court a transcript of the orders of court theretofore had and entered of record in this court sitting at Pueblo in a certain case in said court lately pending between The United States of America and Elie Portale and Juliette Portale. And attached to said transcript of orders were all papers filed in said case at Pueblo.

And the said transcript of orders is in words and figures as follows, to wit:

*Pleas in the District Court of the United States for the District of Colorado sitting at Pueblo.*

Be it remembered that heretofore, and on, to wit, the first day of December, A. D. 1913, the same being one of the regular juridical days of the April term, A. D. 1913, of said court. Present: The Honorable Robert E. Lewis, district judge; the following proceeding was had and entered of record in said court, to wit:

2 In the matter of the grand jury

At this day come the members of the grand jury, heretofore duly empanelled and sworn as grand jurors, and return into court now here the following true bills of indictment and not true bills of indictment, to wit:

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| THE UNITED STATES OF AMERICA<br>*vs.*<br>ELIE PORTALE AND JULIETTE PORTALE. | 1331. Indictment: Failing to report the harboring of alien woman in house of prostitution. |

(Endorsed:) A true bill. (Signed:) B. F. Scribner, foreman.

And thereupon it is ordered by the court that a bench warrant issue without delay against the defendants and returnable forthwith, and that the defendants be let to bail before a United States commissioner in the sum of five hundred dollars ($500) each for their appearances in this court from day to day and from term to term, to answer unto the indictment herein.

In vacation, Thursday, December eighteenth, A. D. 1913.

At chambers in Denver, Colorado, on Wednesday, the seventeenth day of December, A. D. 1913, before the Honorable Robert E. Lewis, district judge, the following proceedings were had, to wit:

* * * * * * *

3 THE UNITED STATES OF AMERICA
*vs.*
ELIE PORTALE AND JULIETTE PORTALE. } 1331. Indictment: Failing to report the harboring of alien woman in house of prostitution.

At this day comes Butler Disman, esquire, assistant district attorney, who prosecutes the pleas of the United States in this behalf, and thereupon on his motion

It is ordered that this case be, and the same is hereby, transferred to this court, sitting at Denver, for further proceedings herein; and that the clerk of this court make a transcript of all orders of court entered herein, certified under the seal of the court, and transmit the same, together with all papers filed herein, to this court, sitting at Denver, without delay.

It is further ordered that the defendants be let to bail before an United States commissioner in the sum of five hundred dollars ($500.00) each, for their appearance before this court forthwith and from day to day and from term to term to answer unto the indictment herein.

UNITED STATES OF AMERICA,
*District of Colorado, ss:*

I, Charles W. Bishop, clerk of the district court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and
4 copy of all orders of court heretofore had and entered of record in said court pending between The United States of America and Elie Portale and Juliette Portale, as fully and completely as the same still remain on file and of record in my office at Pueblo.

And I do further certify that the papers attached hereto and marked respectively A and B are the only papers filed in said court in said cause.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Pueblo, in said district, this eighteenth day of December, A. D. 1913.

[Seal U. S. district court.]

CHARLES W. BISHOP, *Clerk.*
By GARDNER M. GREENE,
*Deputy Clerk.*

A.

UNITED STATES OF AMERICA,
*District of Colorado, ss:*

At the April term of the district court of the United States, within and for the district of Colorado, in the year of our Lord one thousand nine hundred and thirteen, begun and held at Pueblo, in said district, on the first Tuesday in April, in the year of our Lord one thousand nine hundred and thirteen.

The grand jurors of the United States of America, within and for the district of Colorado, good and lawful men, duly selected, empaneled, sworn, and charged, on their oaths present:

5 That one Louise Richar, alias Louise Alexander, an alien woman, did, on, to wit, the first day of January, nineteen hundred and thirteen, enter the United States from Great Britain, Great Britain being then and there and at all times mentioned in this indictment a party to an agreement and arrangement for the suppression of the white slave traffic, adopted July twenty-fifth, nineteen hundred and two, as shown by the proclamation of the President of the United States, dated June fifteenth, nineteen hundred and eight; and that one Elie Portale and one Juliette Portale, alias Juliette Puppet, alias Madame Juliette, did knowingly, within three years after the entry of said alien woman into the United States, keep, maintain, control, and harbor her, said alien woman, at a certain house and place, to wit, at the premises known as nineteen thirty-five Larimer Street, in the city and county of Denver, State of Colorado, for the purpose of prostitution, for the period, to wit, from the twenty-eighth day of July, nineteen hundred and thirteen, to the eighth day of September, nineteen hundred and thirteen.

That said Elie Portale and Juliette Portale, alias as aforesaid, and each of them, so knowingly keeping, maintaining, controlling, and harboring said Louise Richar, as aforesaid, at said city and

6 county of Denver, State and district of Colorado, and within the jurisdiction of this court, at said house and place, for the purpose of prostitution, as aforesaid, did willfully, unlawfully, and feloniously fail to file, within thirty days after said twenty-eighth day of July, nineteen hundred and thirteen, the date of the commencement of said keeping, maintaining, controlling, and harboring of said alien woman, as aforesaid, with the Commissioner General of Immigration of the United States, as required by law so to do, a statement in writing, setting forth the name of said alien woman, the place at which she was then and there kept, and the facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country within the knowledge of said Elie Portale and said Juliette Portale, alias as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

HARRY E. KELLY,
*United States Attorney for the District of Colorado.*

(Endorsed:) No. 1331. United States District Court, District of Colorado. The United States of America v. Elie Portale and Juliette Portale. Indictment: Violation of sec. 6, act June 25, 1910. Failing

7 to report the harboring of alien woman in house of prostitution. A true bill. B. F. Scribner, foreman. Bail $500. Filed Dec. 1, 1913. Charles W. Bishop, clerk; by Gardner M. Greene, deputy clerk. ——— ———, U. S. attorney.

* * * * * * *

(Endorsed:) 2780. U. S. District Court, District of Colorado. United States of America vs. Elie Portale and Juliette Portale. Original papers and transcript of all orders at Pueblo. Filed Dec. 20, 1913. Charles W. Bishop, clerk.

UNITED STATES OF AMERICA,
*District of Colorado, ss:*

In the District Court of the United States within and for the District of Colorado.

UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
ELIE PORTALE ET AL., DEFENDANTS. } Demurrer.

Come now the above named defendants, by their attorneys, Thomas Ward, jr., and Howard L. Honan, and demur to the indictment heretofore filed herein, and for grounds of demurrer, say:

I.

Said indictment states no crime against the United States of America, for that section 6 of the act of June 25th, 1910, known as the white slave act, and upon which section of said statute
8 the said indictment is based, is void and unconstitutional:

(a) Because Congress is not, by the Constitution of the United States, vested with power to require the report, the failure to make which is the gravamen of the charge contained in the indictment.

(b) Because such report can not be required by virtue of the constitutional power granted to Congress to regulate commerce between foreign nations. (Art. 1, sec. VIII, clause 3.)

(c) Because such report does not come within the constitutional power given Congress to regulate commerce between the States.

(d) Because such report is not authorized or warranted under any treaty or agreement entered into by the United States with any foreign power.

(e) Because the said report required by said section of said statute is contrary to, and contravenes the ninth amendment to, the Constitution of the United States.

(f) Because the said report required by said section 6 of the said act is contrary to, and contravenes the tenth amendment to, the Constitution of the United States.

II.

9 (a) Because the said indictment fails to state that the defendants, or either of them, at any time prior to the finding of the indictment, had any knowledge whatsoever of the facts required

to be reported to the Commissioner General of Immigration under section 6 of the act of June 25th, 1910.

(b) Because said indictment fails to charge that defendants, or either of them, ever had any knowledge that Louise Richar, mentioned in said indictment as an alien prostitute, had been in the United States less than three years.

III.

The said indictment attempts to charge the failure to make a report to the Commissioner General of Immigration as to where the said Louise Richar, mentioned in the indictment as the alien prostitute, was kept; that the said indictment fails to charge, in any portion thereof, that the said Louise Richar was ever kept by the said defendants, or either of them.

THOMAS WARD, JR.,
HOWARD L. HONAN,
*Attorneys for Defendants.*

(Endorsed:) 2780. United States of America, District of Colorado. United States of America, plaintiff, vs. Elie Portale et al., defendants. Demurrer to indictment. Filed Dec. 27, 1913. Charles W. Bishop, clerk. Thomas Ward, jr., and Howard L. Honan, attorneys for defendants.

Thirty-fourth day, November term. Tuesday, January 20th, A. D. 1914.

Present: The Honorable Robert E. Lewis, district judge, and other officers as noted on the fourth day of November, A. D. 1913.

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| THE UNITED STATES OF AMERICA<br>*vs.*<br>ELIE PORTALE AND JULIETTE PORTALE. | 2780. Indictment for violation of white slave traffic act of June 25, 1910. |

At this day comes Butler Disman, esquire, assistant district attorney, who prosecutes the pleas of the United States in this behalf, and the defendants by Howard L. Honan, esquire, their attorney, also come. And the demurrer to the indictment herein coming on now to be heard is argued by counsel, and the court having considered the same and being now fully advised in the premises;

It seemeth to the court now here that the indictment herein is not sufficient in law to be answered unto and so the said demurrer is hereby sustained.

Wherefore, it is considered by the court that the defendants of and from the premises in this said indictment specified be discharged, and go hence hereof without day.

11 UNITED STATES OF AMERICA,
*District of Colorado, ss:*

In the district court of the United States within and for the district of Colorado.

THE UNITED STATES OF AMERICA, PLAINTIFF,
*v.*
ELIE PORTALE ET AL., DEFENDANTS.
} No. 2780. Assignment of errors.

Comes now the United States of America, plaintiff in the above-entitled cause, and says that the judgment entered January 20, 1914, by the district court of the United States for the district of Colorado in the above-entitled cause is erroneous and unjust to plaintiff in the following particulars:

I.

The said court erred in sustaining the demurrer to the indictment upon and because of an erroneous construction of section 6 of chapter 395 of volume 36, Part I, of the United States Statutes at Large, page 826, being the act of Congress of June 25, 1910, known as the "White Slave Traffic Act," whereby the said district court held that the acts charged in the indictment do not constitute a violation of said act.

II.

12 The court erred in holding that in order for the defendants, Elie Portale and Juliette Portale, to be criminally liable under section 6 of said act they must have been directly or indirectly connected under the said statute with the bringing into this country of Louise Richar for purposes of prostitution.

III.

The court erred in holding that in order for the defendants, or any person or persons, to be criminally liable under section 6 of said act they must be directly or indirectly connected under the said statute with the bringing or the sending forth of alien women or girls to or from this country for purposes of prostitution.

IV.

The court erred in holding that the only persons who are required by the statute to make the report required therein are those who have been directly or indirectly connected under the statute with the bringing in or sending forth of alien women or girls to or from this country for purposes of prostitution.

V.

The court erred in discharging the defendants.

Wherefore, the plaintiff prays that the judgment of the district court of the United States for the district of Colorado be re-
13 versed, and the said district court be directed to reinstate the said indictment and proceed with the trial of the cause.

Dated, Denver, Colorado, February 19th, 1914.

HARRY E. KELLY,
*United States Attorney.*
BUTLER DISMAN,
*Assistant United States Attorney.*

(Endorsed:) No. 2780. United States District Court, District of Colorado. The United States of America, plaintiff, v. Elie Portale et al., defendants. Assignment of errors. Filed Feb. 19, 1914. Charles W. Bishop, clerk. Harry E. Kelly, U. S. attorney.

UNITED STATES OF AMERICA,
*District of Colorado, ss:*

In the District Court of the United States within and for the District of Colorado.

THE UNITED STATES OF AMERICA
*v.*
ELIE PORTALE ET AL., DEFENDANTS. } No. 2780.

PLAINTIFF'S BILL OF EXCEPTIONS.

Be it remembered, that on the 20th day of January, A. D. 1914, the same being one of the juridical days of the regular November, A. D. 1913, term of the District Court of the United States within and for the District of Colorado, sitting at Denver,
14 Colorado, the above entitled cause came on for hearing before the Honorable Robert E. Lewis, judge of said court, the plaintiff appearing by Butler Disman, Esq., assistant United States attorney, its counsel, and the defendants appearing by Thomas Ward, jr., Esq., their counsel.

And thereupon the following proceedings were had:

On, to wit, the 20th day of January, A. D. 1914, this cause came on to be heard upon the demurrer to the indictment filed on the 27th day of December, A. D. 1913.

And thereupon, and on, to wit, the 20th day of January, A. D. 1914, argument was had by counsel for the respective parties, and the court being sufficiently advised in the premises made and rendered its opinion and decision and order upon the matters so heard and argued, and sustained said demurrer, and thereupon discharged the defendants for the reason and upon the grounds set forth in said

opinion that said indictment, being based upon section 6 of the act of June 25, 1910, 36 Statutes at Large, Part I, 826, and purporting to charge/ the defendants with a crimnal violation thereof, nevertheless the facts disclosed upon the face of said indictment do not bring the charge as the court construes said section within the purview and meaning of its terms, and as so construed the said indict-
15 ment charged no offense against the defendants.

To which said construction of said section 6 of the act of June 25, 1910, and the ruling and order and opinion of the court, the plaintiff, by its counsel, then and there duly excepted in open court.

And now forasmuch as the above and foregoing matters and things do not fully appear of record, the plaintiff tenders this its bill of exceptions by it reserved herein and prays that the same may be allowed, signed, and sealed by the judge of this court and filed and made a part of the record in said cause, pursuant to the statute in such case made and provided, which is accordingly done on this 19th day of February, A. D. 1914.

ROBT. E. LEWIS, [SEAL.]
*District Judge, District of Colorado.*

(Endorsed:) No. 2780. United States District Court, District of Colorado. The United States of America v. Elie Portale et al. Bill of exceptions. Filed Feb. 19, 1914. Charles W. Bishop, clerk. Harry E. Kelly, U. S. attorney.

UNITED STATES OF AMERICA,
*District of Colorado, ss:*

In the District Court of the United States within and for the District of Colorado. No. 2780.

16 UNITED STATES OF AMERICA, PLAINTIFF,
*v.*
ELIE PORTALE ET AL., DEFENDANTS.

PETITION FOR WRIT OF ERROR.

And now comes the United States, plaintiff herein, and says that on the 20th day of January, 1914, this court made its decision sustaining the demurrer to the indictment in this cause and that thereafter, and on the 20th day of January, 1914, this court, pursuant to that decision, entered judgment herein in favor of the defendants and against the plaintiff, and discharged the defendants, in which judgment and decision certain errors were committed to the prejudice of this plaintiff, and of such character as to entitle this plaintiff, under the law, to a review of said judgment and decision in the Supreme Court of the United States by writ of error, all of which will more in detail appear from the assignment of errors filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the cor-

rection of the errors so complained of, and that the transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to said Supreme Court.

17

HARRY E. KELLY,
*United States Attorney.*
BUTLER DISMAN,
*Assistant United States Attorney.*

(Endorsed:) No. 2780. United States District Court, District of Colorado. The United States of America, plaintiff, v. Elie Portale et al., defendants. Petition for writ of error. Filed Feb. 19, 1914. Charles W. Bishop, clerk. Harry E. Kelly, U. S. attorney.

Fifty-sixth day, November term. Thursday, February 19th. A. D. 1914.

Present: The Honorable Robert E. Lewis, district judge, and other officers as noted on the tenth day of February, A. D. 1914.

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| THE UNITED STATES OF AMERICA *vs.* ELIE PORTALE AND JULIETTE PORTALE. | 2780. Indictment for violation of white slave traffic act of June 25, 1910. |

On motion of the United States attorney, it appearing to the court that there has been filed herein petition for a writ of error and an assignment of errors intending to be urged accompanying the same;

It is hereby ordered that the petition for a writ of error be, and hereby is, allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that a writ of error as therein prayed be issued by the clerk of

18 the district court for this district, under the seal of such district court, pursuant to law.

UNITED STATES OF AMERICA,
*District of Colorado, ss:*

In the District Court of the United States within and for the District of Colorado, No. 2780.

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| UNITED STATES OF AMERICA, PLAINTIFF, *v.* ELIE PORTALE ET AL., DEFENDANTS. | |

*To the clerk of the district court:*

SIR: You will issue and transmit to the Supreme Court of the United States a complete transcript of the record on writ of error in the above-entitled cause.

H. E. KELLY,
*United States Attorney.*
B. DISMAN,
*Assistant United States Attorney.*

(Endorsed:) No. 2780. United States District Court, District of Colorado. The United States of America, plaintiff, v. Elie Portale et al., defendants. Præcipe for transcript of record. Filed Feb. 19, 1914. Charles W. Bishop, clerk. Harry E. Kelly, U. S. attorney.

19 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Robert E. Lewis, judge of the United States District Court for the District of Colorado, greeting:

Because in the record and proceedings, as also in the rendition of the judgment which is in the said district court, before you, between the United States of America, plaintiff, and Elie Portale et al., defendants, a manifest error has happened, to the great prejudice of said plaintiff, the United States of America, as is said and appears by the petition herein.

We, being willing that errors, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the United States Supreme Court in the city of Washington, D. C., together with this writ, so as to have the same at said place on the 21st day of March, 1914, that the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of February, 1914.

Attest my hand and seal of the United States District Court for the District of Colorado, at the clerk's office at Denver, Colorado, on the day and year last above written.

[SEAL.] CHARLES W. BISHOP,
*Clerk U. S. District Court for the District of Colorado.*

Allowed this 19th day of February, 1914.

ROBT. E. LEWIS,
*Judge of the United States*
*District Court for the District of Colorado.*

19½ RETURN.

THE UNITED STATES OF AMERICA,
*District of Colorado, ss:*

In obedience to the command of the within writ, I herewith transmit to the United States Supreme Court a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the District Court of the United States for the District of Colorado, at the city and county of Denver, in said district, this 26th day of February, 1914.

[SEAL.] CHARLES W. BISHOP, *Clerk.*

DISTRICT OF COLORADO, *ss:*

The plaintiff in error, having served this writ, by lodging a copy thereof in the clerk's office where the record remains, and having given the security required by law, on the issuing of the citation, within the time required by law, this writ therefore becomes a supersedeas.

In witness whereof, I hereunto subscribe my name and affix the seal of the District Court of the United States for the District of Colorado, at the city and county of Denver, in said district, this ——— day of ——— ———, A. D. 1914.

——— ———, *Clerk.*

(Endorsed:) No. 2780. United States District Court, District of Colorado. The United States of America v. Elie Portale et al. Writ of error. Filed Feb. 19, 1914. Charles W. Bishop, clerk.

20 UNITED STATES OF AMERICA, *ss:*

To Elie Portale and Juliette Portale, alias Juliette Puppet, alias Madame Juliette:

Greeting: You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the District of Colorado, wherein the United States of America is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this 19th day of February, A. D. 1914.

ROBT. E. LEWIS,
*Judge of the District Court of the United States for the District of Colorado.*

On this —— day of ———, 1914, personally appeared ——— ———, before me, ——— ———, and makes oath that he delivered a true copy of the within citation to ——— ———.

Sworn to and subscribed this —— day of ———, 1914.

UNITED STATES OF AMERICA,
*District of Colorado, ss:*

I hereby certify and return that I did on the 19th day of February, A. D. 1914, at the city and county of Denver, deliver a certified copy

hereof to the within-named Elie Portale and Juliette Portale, alias, etc., and as to each of them, personally.

Fees and costs, $4.20.

D. C. BAILEY, *U. S. Marshal.*
By E. B. CHADWICK, *Deputy.*

(Endorsed:) No. 2780. United States District Court, District of Colorado. The United States of America, plaintiff, v. Elie Portale et al., defendants. Citation. Filed Feb. 20, 1914. Charles W. Bishop, clerk.

21 UNITED STATES OF AMERICA,
*District of Colorado, ss:*

I, Charles W. Bishop, clerk of the District Court of the United States for the District of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to eighteen (18), both inclusive, to be a true, perfect, and complete transcript and copy of the pleadings, bill of exceptions, assignment of errors, and all proceedings in the case, as directed in the praecipe filed herein, together with a true copy of such praecipe, heretofore filed and entered of record in said court and in a certain case lately in said court pending between The United States of America and Elie Portale and Juliette Portale, as fully and completely as the same still remain on file and of record in my office at Denver.

And I further certify that I have annexed to and transmit herewith, a copy of all opinions heretofore handed down and filed in said case.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at the city and county of Denver, in said district, this twenty-sixth day of February, A. D. 1914.

[SEAL.] CHARLES W. BISHOP, *Clerk.*

22 UNITED STATES OF AMERICA,
*District of Colorado, ss:*

In the District Court of the United States within and for the District of Colorado.

UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
ELIE PORTALE ET AL., DEFENDANTS. } 2780. Opinion.

The defendants are under indictment based on section 6 of the act of June 25, 1910, known as the "white slave traffic act" (36 Stat., 826). This indictment has been challenged by demurrer. It is charged in the indictment that one Louise Richar, an alien woman, entered the United States on January 1, 1913, from Great Britain, which country is a party to an arrangement for the suppression of the white-slave traffic, as shown by the proclamation of the President

f June 15, 1908 (35 Stat., part 2, p. 1979); that the defendants did nowingly within three years after the entry of said alien woman arbor her at a house at No. 1935 Larimer Street, Denver, for the urpose of prostitution, from July 28th to September 8th, 1913, and hat the said defendants within thirty days from July 28, 1913, failed o file with the Commissioner General of Immigration of the United States the statement in writing required by the second para-
3 graph of said section 6 of the act of June 25, 1910. There is no charge in the indictment that Louise Richar was brought nto the United States by the defendants, or by anyone else, with he purpose of having her become a prostitute, nor that the defend-nts had any knowledge or information on their part that Louise Richar was brought to America for that purpose. Neither is there a harge that the defendants had any knowledge of the facts in said paragraph of which report is required.

Considering the indictment only, and the charge therein as we find t, it is clearly bad, under the ruling in Keller vs. United States, 213 U. S., 138; but we do not intend by this to express the view that ection 6 of the act of June 25, 1910, is void under the ruling in the Keller case, but quite to the contrary. Section 6 clearly discloses hat its purpose is to carry out on the part of the United States the arrangement which had been entered into with foreign countries for he suppression of the white-slave traffic (35 Stat., Part 2, pp. 1979–1984). That arrangement dealt with the traffic in foreign commerce. It provides, among other things, for the return of immigrant and emigrant women and girls transported for this purpose, to their native countries; it provides for the establishment of bureaus through which information relating to the subject shall be obtained and the exchange of that information between the contracting
24 countries. The section of the act also makes provision for this. And I am of the view that the information required by he second paragraph of said section is from persons who have had to do, directly or indirectly, with the bringing in or sending forth of such women and girls. It presupposes such information and knowledge on their part. Unless this construction is to prevail the third paragraph of said section is meaningless. This paragraph extends immunity for the furnishing to the Commissioner General of Immigration of such information. Immunity from what? Certainly not from all the crimes in the catalog that might be set forth in the written statements to be filed with the Commissioner General of Immigration, but necessarily from the criminal act denounced by other sections of the act against those who have anything to do, directly or indirectly, with the bringing in or sending forth of such women and girls for prostitution. The powerful inducement held out is for the purpose of uncovering the facts necessary to the execution of the international arrangement—past offenses for the violation of sections 2 and 3 of the act are forgiven, if the informant makes the required disclosure, and his failure to do so subjects him to double punishment. Under the Keller case the harboring alone does not

constitute a criminal offense. But section 6 by necessary im-
25 plication is made to apply only to persons who have been guilty of a violation of other sections of the act by being in some manner connected with the bringing in of the alien. The indictment does not charge, and the district attorney did not contend on argument, that the defendants had anything whatever to do with the coming of Louise Richar to the United States. For these reasons the demurrer to the indictment must be sustained and it is so ordered.

ROBT. E. LEWIS, *District Judge.*

Jany. 20, 1914.

(Endorsed:) 2780. U. S. District Court, District of Colorado. United States of America vs. Elie Portale et al. Opinion, Lewis, district judge, on demurrer to indictment. Filed Jan. 20, 1914. Charles W. Bishop, clerk.

UNITED STATES OF AMERICA,
*District of Colorado, ss:*

I, Charles W. Bishop, clerk of the District Court of the United States for the District of Colorado, do hereby certify the above and foregoing pages numbered from twenty-two (22) to twenty-five (25), to be a true, perfect, and complete transcript and copy of all opinions heretofore handed down and filed in said court and in a cer-
tain case lately in said court pending between The United
26 States of America and Elie Portale and Juliette Portale, as fully and completely as the same still remain on file in my office at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court at the city and county of Denver, in said district, this twenty-sixth day of February, A. D. 1914.

[SEAL.] CHARLES W. BISHOP, *Clerk.*

(Indorsed:) File No. 24083. Colorado D. C. U. S. Term No., 932. The United States, plaintiff in error, vs. Elie Portale and Juliette Portale, alias Juliette Puppet, alias Madame Juliette. Filed March 7th, 1914. File No. 24083.

○

SUPREME COURT, U. S.
FILED
MAR 3 1914
JAMES D. MAHER
CLERK

No. 892

# In the Supreme Court of the United States

OCTOBER TERM, 1913

THE UNITED STATES, PLAINTIFF IN ERROR,

v.

ELLIS POWELL AND ARTHUR BOWLES, ALIAS JOHNSON POWELL, ALIAS MADAME JOHNSON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF HAWAII.

BRIEF FOR THE UNITED STATES.

# In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR,
*v.*
ELIE PORTALE AND JULIETTE PORTALE, alias Juliette Puppet, alias Madame Juilette. } No. 932.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.*

**MOTION BY THE UNITED STATES TO ADVANCE.**

Comes now the Solicitor General, and, in accordance with the provisions of the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, moves the court to advance this cause for hearing at an early day convenient to the court during the next term.

The indictment was for a violation of the act of June 25, 1910, known as the "White Slave Traffic Act," 36 Stat. 825, 827.

It is charged in the indictment that one Louise Richar, an alien woman, entered the United States on January 1, 1913; that the defendants, who were in no way connected with her entry, did, within three years after her entry, harbor said alien woman at a house in Denver, for the purpose of prostitution, from

July 28 to September 8, 1913, and that the said defendants failed to file with the Commissioner General of Immigration, within thirty days from July 28, the statement in writing required by the second paragraph of section 6 of the act.

The court below sustained a demurrer to the indictment holding that section 6 by necessary implication is made to apply only to persons who have been guilty of a violation of other sections of the act by being in some manner connected with the bringing in of the alien.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
*Solicitor General.*

MAY, 1914.

[redacted]

# INDEX.


| | Page. |
|---|---|
| STATEMENT | 1–6 |
| Review under Criminal Appeals Act (34 Stat. 1246) | 1 |
| Point of decision on demurrer | 1–2 |
| STATUTES: | |
| Section 6, "White-slave traffic act" (36 Stat. 827) | 2–3 |
| Paris Conference treaty (35 Stat. 1979) | 4–5 |
| AVERMENTS OF INDICTMENT | 5–6 |
| SPECIFICATION OF ERRORS | 6–7 |
| ARGUMENT | 8–28 |
| 1. Review here limited to precise question decided below | 8–9 |
| 2. Statement due from any "keeper," though not concerned in importation | 9–16 |
| Court below disregarded literal reading of section 6 | 9–10 |
| Other provisions of Act confirm literal reading | 10 |
| Lower court's suggestions without force | 10–11 |
| Consequences of its holding | 11–12 |
| 2*a*. Same language previously so read by this court | 13–14 |
| Here used with that meaning; history of acts | 13–16 |
| 3. Constitutionality of section not decided below | 16 |
| Keller case (213 U. S. 147) distinguished | 17–20 |
| *a*. Treaty obligation here involved | 17–20 |
| *b*. "Keeping" not here punished | 18 |
| *c*. Amendment was to obviate force of Keller case | 15, 18 |
| 3*a*. Information essential to regulation of commerce | 22 |

ARGUMENT—Continued. Page.

4. Such information may be secured by penalties ..... 22–27
No right of citizen violated here ..... 24–25
It is reasonably related to the end sought ..... 25–27
Other instances of compulsory procurement of information. (Internal Revenue, Immigration, Bankruptcy, Interstate Commerce, Census) ..... 28

CONCLUSION ..... 28

AUTHORITIES CITED.


| | Page. |
|---|---|
| *B. & O. R. R. Co.* v. *Int. Com. Comm.*, 221 U. S. 618 | 20, 21, 22, 23, 24 |
| *Hackfeld* v. *United States*, 197 U. S. 442 | 13 |
| *Hamilton* v. *Rathbone*, 175 U. S. 414, 420 | 13 |
| *Int. Com. Comm.* v. *Goodrich*, 224 U. S. 194 | 25 |
| *Kansas City Southern Ry.* v. *United States*, 231 U. S. 423 | 27 |
| *Keller* v. *United States*, 213 U. S. 139 | 14, 17, 20, 21 |
| *Kepner* v. *United States*, 195 U. S. 124 | 13 |
| *Latimer* v. *United States*, 223 U. S. 501 | 13 |
| *Lewis Publ. Co.* v. *Morgan*, 229 U. S. 315 | 21, 23 |
| *Mason* v. *Fearson*, 9 How. 248 | 13 |
| *Texas Cement Co.* v. *McCord*, 233 U. S. 137 | 10 |
| *The Abbotsford*, 98 U. S. 440 | 13 |
| *United States* v. *Barber*, 219 U. S. 72 | 8 |
| *United States* v. *Birdsall*, 233 U. S. 223 | 9, 20 |
| *United States* v. *Davin*, 189 Fed. 244 | 19 |
| *United States* v. *Goldenberg*, 168 U. S. 95 | 10 |
| *United States* v. *Keitel*, 211 U. S. 370 | 8 |
| *United States* v. *Lexington Mills Co.*, 232 U. S. 399 | 10 |
| *United States* v. *Mescall*, 215 U. S. 31 | 8 |
| *United States* v. *Mooney*, 116 U. S. 104 | 13 |
| *United States* v. *Young*, 232 U. S. 155 | 9 |

# In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,
*v.*
ELIE PORTALE AND JULIETTE PORTALE, alias Juliette Puppet, alias Madame Juliette. } No. 382.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.*

## BRIEF FOR THE UNITED STATES.

### STATEMENT OF THE CASE.

This writ of error was sued out by the Government under the Criminal Appeals Act of 1907 (34 Stat., 1246) to the United States District Court of Colorado to review its decision (—— Fed. —— R. pp. 5, 8, 13) sustaining defendants' demurrer to an indictment founded on section 6 of the "White-slave traffic act" (36 Stat., 827), which decision was to the effect that, for want of averment that defendants were "connected with the *bringing in* of the alien" and because section 6—as the court construed it—only applied to "persons who have had to do directly or indirectly

with the bringing in or sending forth of such women" (R., pp. 13–14) the indictment did not charge a violation of that section or of the act.

The statute, omitting non-essentials, reads:

> SEC. 6. That for the purpose of regulating and *preventing* the transportation in foreign commerce of alien women * * * for purposes of prostitution * * * and in pursuance of and *for the purpose of carrying out* the terms of *the agreement* or *project of arrangement for the suppression of the white-slave traffic*, adopted July 25, 1902, for submission to their respective Governments by the delegates of various powers represented at the Paris conference, * * * the Commissioner General of Immigration is hereby designated as the authority of the United States to receive and centralize information concerning the procuration of alien women, * * * and to exercise supervision over such alien women, * * * receive their declarations, establish their identity, and ascertain from them who induced them to leave their native countries, respectively. And it shall be the duty of said Commissioner General * * * to receive and keep on file in his office the statements and declarations which may be made by such alien women * * * and those which are hereinafter required * * *
>
> *Every person* who shall maintain, control, support, or harbor in any house or place, for the purpose of prostitution, * * * *any alien woman* * * * within three years after she shall have *entered* the *United States*

*from any country, a party to said arrangement for the suppression* of the white-slave traffic, shall *file* with the Commissioner General of Immigration a statement in writing setting forth the *name* of such alien woman, * * * the *place* at which *she is kept*, and all facts as to the *date* of *her entry* into the United States, the *port* through which she entered, her *age*, *nationality*, and *parentage*, and *concerning* her *procuration* to *come to this country*, within the knowledge of such person; and any person who shall fail within 30 days after such person shall commence to keep, etc. * * * any alien woman, * * * to file such statement concerning such alien woman, * * * or who shall knowingly and willfully state falsely, or fail to disclose in such statement any fact within his knowledge or belief with reference to the age, nationality, or parentage of any such alien woman, * * * or concerning her procuration to come to this country, shall be deemed guilty of a misdemeanor," etc. * * *

No person shall be excused from furnishing the statement * * * on the ground * * * that the statement * * * or the information therein contained might tend to incriminate him, or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, matter, or thing concerning which he may truthfully report in such statement as required by the provisions of this section.

The agreement so adopted at the "Paris conference" (35 Stat. 1979) recites that the contracting parties,

> Being desirous to assure to women who have attained their majority and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of Trade in White Women, have resolved to conclude an arrangement with the view to concert proper measures to attain this purpose, * * * and provide that
>
> Each of the contracting Governments agrees to establish or designate an authority who will be directed to centralize all information concerning the procuration of women or girls, both, in a view to their debauchery in a foreign country; that authority shall have the right to correspond directly with the similar service established in each of the other contracting States.
>
> ART. 2.
>
> Each of the Governments *agrees to exercise a supervision* for the purpose *to find out*, particularly in the stations, harbors of embarkation, and on the journey, the *conductors* of *women* or girls intended for debauchery. Instructions shall be sent for that purpose to the officials or to *any other qualified person*, in order *to procure* within the limits of the laws *all information* of a *nature* to *discover a criminal traffic*. * * *

ART. 3.

> The Governments agree to receive, in each case, within the limits of the laws, the declarations of women and girls of foreign nationality who surrender themselves to prostitution, with a view to establish their identity and their civil status and to *ascertain* who has induced them to leave their country. The information received will be communicated to the authorities of the country of origin of the said women or girls, with a view to their eventual return. * * *

ART. 6.

> The contracting Governments agree, within the limits of the laws, to exercise, as far as possible, a supervision over the bureaus or agencies which occupy themselves with finding places for women or girls in foreign countries.

The indictment, in substance, charged (R. p. 3) that "one Louis Richar, * * * an alien woman, did on, to wit, the 1st day of January, 1913, enter the United States from Great Britain" (Great Britain being then and there, and at all times * * * a party to an agreement and arrangement for the suppression of the white-slave traffic, adopted July 25, 1902, as shown by the proclamation of the President of the United States dated June 15, 1908), "and that one Elie Portale and one Juliette Portale * * * did knowingly, within three years after the entry of said alien woman into the United States, keep,

maintain, control, and harbor her, said alien woman, at a certain house and place (identified by number, etc.), for the purpose of prostitution * * * from the 28th day of July, 1913, to the 8th day of September, 1913." That "each of them so knowingly keeping, etc., said Louise Richar, as aforesaid, * * * for the purpose of prostitution, as aforesaid, did willfully, unlawfully, and feloniously fail to file within 30 days after said 28th day of July, 1913, * * * with the Commissioner General of Immigration of the United States, as required by law so to do, a statement in writing setting forth the name of said alien woman, the place at which she was then and there kept, and facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country, within the knowledge of Elie Portale and said Juliette Portale."

The demurrer (R. pp. 4–5) advanced various alleged infirmities which need not be here dealt with as the court's decision (R. pp. 8, 13) was based upon the single ground hereinbefore stated.

## SPECIFICATION OF ERRORS.

### I.

The said court erred in sustaining the demurrer to the indictment upon and because of an erroneous construction of section 6 of chapter 395 of volume 36, Part I, of the United States Statutes at Large, page 826, being the act of Congress of June 25, 1910, known

as the "White-slave traffic act," whereby the said district court held that the acts charged in the indictment do not constitute a violation of said act.

II.

The court erred in holding that in order for the defendants, Elie Portale and Juliette Portale, to be criminally liable under section 6 of said act they must have been directly or indirectly connected under the said statute with the bringing into this country of Louise Richar for purposes of prostitution.

III.

The court erred in holding that in order for the defendants, or any person or persons, to be criminally liable under section 6 of said act they must be directly or indirectly connected under the said statute with the bringing or the sending forth of alien women or girls to or from this country for purposes of prostitution.

IV.

The court erred in holding that the only persons who are required by the statute to make the report required therein are those who have been directly or indirectly connected under the statute with the bringing in or sending forth of alien women or girls to or from this country for purposes of prostitution.

V.

The court erred in discharging the defendants.

BRIEF OF ARGUMENT.

I.

Of the scope of its review under the criminal appeals act, this court said, in *United States* v. *Keitel*, 211 U. S. 370–398:

> That act * * * contemplates vesting this court with jurisdiction *only to review the particular question decided by the court below*, for which the statute provides.

And again, in *United States* v. *Mescall*, 215 U. S. 31:

> But our inquiry is limited *to the particular question* decided by the court below.

And in *United States* v. *Barber*, 219 U. S. 72–78:

> We can only look to the judgment which was actually entered to determine what was decided * * * and the court in that judgment expressly placed its decision * * * upon the plea of the bar of limitations.

In the present case the court below in its opinion (R. p. 14) said:

> But section 6, by *necessary implication*, is made to apply *only* to *persons* who have been guilty of a violation of other sections of the act by being *in some manner connected with the bringing in* of the alien. The *indictment* does *not charge*, and the district attorney did not contend on argument, that the *defendants had anything whatever to do with the coming* of Louise Richar to the United States. For *these reasons* the demurrer to the indictment must be sustained and it is so ordered.

Because, then, of the reason thus given for its decision we must assume that the indictment otherwise sufficiently charged a violation of the statute, and so must disregard the various other objections urged by the demurrer.

In the case of *United States* v. *Birdsall*, 233 U. S. 223–231 (a direct review, under the Criminal Appeals Act of 1907, of a decision sustaining a demurrer to an indictment upon specific grounds), this court said:

> We must assume, in view of the decision below, that the indictment sufficiently charged that the action of Brents and Van Wert, which it was sought to influence, was action in the course of duty so far as the regulations and usages of the department could establish that duty.

See also *United States* v. *Young*, 232 U. S. 155, 160.

This limits our inquiry to the one question decided, as we think erroneously, by the court below.

II.

**Section 6 requires a statement from "every person who shall keep," etc., any alien * * * prostitute, entering from one of the specified countries, whether that person was or was not concerned in bringing her in.**

1a. The literal reading of the act is opposed to the limited meaning given it by the court below. The latter interpreted it as if it read thus:

"every person who" [after having illegally imported] "shall maintain," etc. The words here bracketed are not in the act; and it is a cardinal principle that in interpreting a statute you must neither introduce nor omit language if it can otherwise be given a

reasonable meaning. (*United States* v. *Goldenberg*, 168 U. S. 95, 102, 103; *United States* v. *Lexington Mills Co.*, 232 U. S. 399, 409, 410; *Texas Cement Co.* v. *McCord*, 233 U. S. 157, 163).

In *United States* v. *Goldenberg*, 168 U. S. 95, 102, 103, the court, dealing with the same subject, used this language:

> The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. * * * No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any *judicial addition to the language of the statute.*

1b. Other portions of section 6 also sustain this view. The word "might" in the phrase "might tend to incriminate him" in the last sentence shows that Congress contemplated securing statements from both those who *might* be incriminated (i. e., persons concerned with bringing in the woman) and those who might not (i. e., those who merely maintained). But under the interpretation of the lower court *everyone* required to file a statement would necessarily be incriminated by stating the facts "concerning her procuration to come to this country."

1c. The suggestion of the court below that persons merely maintaining might not have the fact knowledge necessary to enable them to make the

statement is without force, for two items, "her name" and the "place where she was kept" would necessarily be known to them. Moreover, they are only required to state such of the items as are "within their knowledge." Its suggestion that the person "bringing in" would have *all* the information is likewise without force because (1) such person would not necessarily have information about "her age," "parentage" or "nationality;" and (2) if the section had been meant to reach only those who necessarily must know the facts desired then it was idle to put the words "within the knowledge of such person" in the act at all. In themselves, they carry the suggestion that the section was aimed at persons who might, as well as those who might not, know all the items of information required.

Id. This view is reenforced by a consideration of the consequences of holding otherwise. If section 6 be limited to persons concerned in "bringing in," it follows that when they merely do so in violation of sections 2 or 3, they are criminally punishable: but if after "bringing in," they "keep" the woman in prostitution, section 6 forces them to file a statement, and thereby secure immunity against prosecution under sections 2 and 3. If it be urged that this result would ensue under our construction, we answer, to a limited extent only. For when information is gained from those who but "maintain," it would not produce immunity, but would rather aid in punishing the procurers. Manifestly the purpose of the statute was not to immunize procurers. Its declared object

is "to centralize information concerning the procuration of alien women" *with* a view to "the suppression of white slave traffic" in accordance with "the project of arrangement" between the "powers represented at the Paris convention." The "project of arrangement" or treaty itself provided for assembling and exchanging this information. Congress must have foreseen that one who kept a woman in prostitution after entry would be apt to learn something of the matters on which information was desired, and as much so if not concerned as if concerned in her importation; while in the former instance, he would be more willing to impart what he had learned than in the latter.

If those who merely "maintained" were excused from filing the statement, a large natural avenue of information would be blocked; though the international agreement contemplated the very fullest gathering and interchange.

Under the lower court's construction none of the information gained under section 6 would ever be available to punish persons importing. Under our construction most of it would be. The latter construction, therefore, tends more to accomplish these purposes of the act: (1) To punish the alien procurer and so discourage exportation; (2) to punish the citizen procurer with like result on importation; and (3) to learn the names of those engaged in the prohibited traffic both at home and abroad, so as to be able to more intelligently supervise their future conduct and thereby prevent further traffic on their part.

2. The meaning we contend for had been given *this very language* by this court *before* its use in the White-slave traffic act.

In *Hamilton* v. *Rathbone*, 175 U. S. 414, 420, this court said:

> * * * If there were an ambiguity in a section of the Revised Statutes, resort might be had to the original act from which the section was taken, to ascertain what, if any, change of phraseology there is and whether such change should be construed as changing the law. (See also *Texas Pac. Ry.* v. *I. C. C.*, 162 U. S. 197, 218.)

It has likewise declared that when specific language, judicially interpreted by a court of last resort, is later used by a legislative body in the same jurisdiction, it will be presumed to have been used with the meaning so ascribed to it. (*Mason* v. *Fearson*, 9 How. 248, 258, 259; *The Abbotsford*, 98 U. S. 440, 444; *United States* v. *Mooney*, 116 U. S. 104, 106; *Kepner* v. *United States*, 195 U. S. 100, 124; *Hackfeld* v. *United States*, 197 U. S. 442, 451; *Latimer* v. *United States*, 223 U. S. 501, 504.)

In the last case this court said:

> The words having received such a construction under the act of 1883, *must* be given the same meaning when used in the Tariff Act of 1897, on the theory that in using *the phrase in the later statute Congress adopted the construction already given it by this court.*

The language "whoever shall keep, maintain, control, support or harbor in any house or other

place, for the purpose of prostitution * * * any alien woman * * * within three years after she shall have entered the United States shall be deemed guilty," etc., found in sec. 3 of the Alien Immigration Act of February 20, 1897 (34 Stat. 899), was before this court in *Keller* v. *United States*, 213 U. S. 139, decided April 5, 1909, and is almost word for word the same as the language now before the court. The indictment did not charge nor did the proof show that Keller was concerned in the importation. This court held that the provision above quoted was unconstitutional because it *punished* the *mere keeping*, etc., of a prostitute in a house of ill fame—a matter belonging to the police power of the State, and over which Congress had no control (144–147).

Had this court read the above language (as did the court below in this case) as being aimed only at those who, in addition to maintaining, had been previously concerned in "bringing in" from a foreign country, it must have declared the act constitutional as a legitimate exercise of the commerce power. That contention was made by the Government but in answer to it this court said:

> *As to the suggestion that Congress has power to punish one assisting in the importation of a prostitute it is enough to say that the statute does not include such a charge.*

A second parallel between the two acts is that the earlier sections of the White-slave traffic act and the preceding clause of section 3 of the immigration act alike punish such importation. And as the court

below was of the opinion that section 6 of the former act requires a statement from those only who were punishable under the provisions of the earlier sections, it is important to note that the same condition obtained with reference to the language before this court in the Keller case.

After the decision in the case, and on March 26, 1910, section 3 of the Immigration Act was amended (36 Stat. 263) so as to read as follows:

> Or whoever shall keep, maintain, control, support, employ, or harbor in any house or other place for the purpose of prostitution or for any other immoral purpose, *in pursuance of such illegal importation*, etc.

The italicized words last above were inserted for the express purpose of meeting the views of this court in the Keller case. In the House debate it was said—

> And, indeed, the court in the Keller case virtually admits that if this were the case they would hold the part of the present law they were considering constitutional. It is believed that by inserting the words "in pursuance of such illegal importation" the act will be brought clearly within the purview of the Federal authority, etc. (Pt. 1, vol. 45, Congressional Record, pp. 549–618.)

Ninety days later the same Congress in the White-slave traffic act used the identical language held in the Keller case to reach anyone who merely maintained, after entry, carefully omitting the qualifying language "in pursuance of such illegal importa-

tion" added by amendment on March 26, previous, to the Immigration Act.

In enacting this White-slave traffic act, the Immigration Act, the international treaty formulated at the "Paris conference," and especially the Keller case, were each carefully considered. (Vol. 1, H. Rept. No. 47, 61st Cong., 2d sess., pp. 3, 9, 13; Vol. 3, S. Rept. No. 886, 61st Cong., 2d sess., pp. 2, 4, 6, 14.)

The conclusion is irresistible that Congress meant section 6 of the White-slave traffic act to apply to *all persons* reached by like language in the act of 1907, and that the court below erred in giving it a different meaning.

## III.

### Constitutionality of section 6.

Here the discussion should end, because no other question was decided by the court below or brought here under the Criminal Appeals Act; and this court should not assume that the court below will not correctly decide other questions as they may arise. It will be urged, however, that construed in accordance with the Government's contention, the section is unconstitutional within the rule of the Keller case; and that this court should consider the question though not decided below, because if this claim be well founded the action would ultimately fail, and so it would be idle to send the case back for further proceedings. Under protest, therefore, we address ourselves to the constitutional question.

Had section 6 punished the mere "keeping" in prostitution it yet could be distinguished from the Keller case (213 U. S. 147) wherein this court said:

> The question is, therefore, whether there is any authority conferred upon Congress by which this particular portion of the statute can be sustained. By sec. 2 of Art. II of the Constitution, power is given to the President, by and with the advice and consent of the Senate, to make treaties, *but there is no suggestion in the record or in the briefs of a treaty* with the King of Hungary *under which this legislation can be supported.*

(It should be noted that the alleged criminal act involved in the Keller case was committed about two weeks before June 25, 1908, when the United States first gave its adherence to the "Paris conference" treaty.)

Section 6 of the White-slave traffic act is declared to be in furtherance of that treaty, the prime objects of which, as we have seen, were the protection of women and girls by the suppression of the traffic, the return to the native country of alien women brought by procuration into the United States, the punishment and prevention of future operations of their procurers, and the centralization and exchange of information calculated to aid in bringing about these results.

The direct punishment for merely "keeping" would not be deemed beyond the power of Congress or a mere invasion of the police power of the State,

had it been calculated to discharge the obligations of a treaty. It might have been justified on the theory that it would have tended to facilitate the return of the alien women to their native country and also tended to suppress the traffic by increasing the risk of handling them so as to make it undesirable. Congress, however, was not willing to rest the legislation on so slender a distinction and further differentiated it (without punishing the mere keeping in prostitution) by simply requiring those who "kept" (and so might become possessed of information desirable under the treaty) to furnish that information under penalty.

The majority report of the House, and both majority and minority reports of the Senate on the bill, regarded section 6 as in furtherance of the obligations of that treaty; and *both* majority reports regarded it as also based upon the power to regulate foreign commerce. (Vol. 1, H. Rept., 61st Cong., 2d sess., No. 47, pp. 3, 9, 13; vol. 3, S. Rept., 61st Cong., 2d sess., No. 886, pp. 2, 4, 6, 14.) And the court below conceded this, saying (R., p.13):

> * * * But we do not intend by this to express the view that section 6 of the act of June 25, 1910, is void under the ruling in the Keller case, but quite to the contrary. Section 6 *clearly discloses that its purpose is to carry out on the part of the United States the arrangement which had been entered into with foreign countries for the suppression of the white-slave traffic* (35 Stat., part 2, pp. 1979–

1984). *This arrangement dealt with the traffic in foreign commerce.* It provides among other things for the return of immigrant and emigrant women and girls transported for this purpose to their native countries; it provides for the establishment of bureaus through which information relating to the subject shall be obtained and the exchange of that information between the contracting countries. The section of the act also makes provision for this.

So direct is the relation between treaty and statute, that it has been held that an allegation that the alien came from a country which was a party to this treaty is an essential to a valid indictment. (*United States* v. *Davin*, 189 Fed. 244.)

Section 6 is constitutional both as in furtherance of the treaty and as incident to the regulation of foreign commerce. If justifiable under either power, it must be held valid. It can not be fairly contended that the information secured through these statements (involving the identification of both the woman and her procurer and the circumstances attending the procuration) would not tend to give intelligent direction to efforts both to return these women to their native land and to observe the procurer—even had he, by furnishing the statement, gained immunity as to that single transaction—so as to prevent him from thereafter successfully carrying on the traffic. These are declared objects of the treaty; and the punishment of the

procurer and prevention of his future traffic are proper subjects of commerce regulation.

The Keller case, supra, is authority to the point that proper legislation might be justified under the treaty-making power. While as to the commerce power, this court in *United States* v. *Birdsall et al.*, 233 U. S. 235, said:

> Further, there can be no question that the *authority* of the department, in its undertaking to *suppress the forbidden traffic extended to every matter in which its aid was appropriate.* * * * And this, as we have seen, embraces every action which *may properly constitute an aid in the enforcement of the law.*

And in *B. & O. R. R. Co.* v. *Int. Com. Comm.*, 221 U. S. 618–619, this court said:

> This consideration, however (incidental effect on employees in intrastate transportation), lends no support to the contention that the statute is invalid. For there can not be denied to Congress the effective exercise of its constitutional authority. By virtue of its power to regulate interstate and foreign commerce Congress may enact laws for the safeguarding of the persons and property that are transported in that commerce, etc. * * * And in *imposing restrictions having reasonable relation to this end,* there is no interference with liberty of contract as guaranteed by the Constitution.

As to whether obtaining information of the kind prescribed by section 6 of the act is a justifiable

exercise of power, this court in the Birdsall case, supra, said:

> * * * but in so acting they would necessarily rely largely upon the reports and advice of subordinates in the department, who *were more directly acquainted with the existing conditions, the records of offenders and the facts and circumstances of particular cases. For this reason,* if for no other, *it was within the competency of the office to establish regulations* * * * that all persons employed in its work *should render* to the Commissioner, whenever requested, *true reports,* etc. (234.)

In Lewis Publishing Co. vs. Morgan, 229 U. S. 315, it said:

> And the additional exactions as to disclosure of stockholders, principal creditors, etc., also are as clearly incidental to the power to classify as are the requirements as to disclosures of ownership, editors, etc. * * * We say this because of the intimate relation which exists between ownership and debt, since debt in its ultimate conception is * * * often the equivalent which would result from ownership itself.

And in the B. & O. R. R. Co. case, supra, this court declared valid a statute (act of June 18, 1910, 36 Stat. 556), amending section 20 of the "Act to Regulate Commerce," which amendment, so far as material reads:

> The Commission shall also have authority by general or special orders, to require said carriers, or any of them, to *file monthly reports*

> of earnings and expenses, and to *file periodical or special reports, or both * * *, concerning any matter about which the commission is authorized, or required, by this or any other law to inquire or keep itself informed* or *which it is required to enforce,* etc.

Congress was within its power in authorizing the Commissioner General of Immigration to "receive and centralize" this information. But it will be urged that in the Birdsall case the requirement was aimed at Government officers, who were bound to obey; and that in the B. & O. R. R. case it was aimed at those directly engaged in the commerce. Whereas here the statute seeks to impose a duty to furnish the report or statement upon one not an officer, and possibly not concerned (as in the case at bar) in the foreign commerce or importation. This invites the final question upon which we submit:

IV.

**The information being an appropriate aid to enforce the treaty and suppress the vice commerce, Congress may secure it by requiring a report, under penalty, from anyone reasonably likely to possess it.**

It will be conceded we assume, that Congress may seek the information, and that the Commissioner General acts officially in centralizing it. Will it be said Congress is limited to the information that its own officers can discover, or that is voluntarily offered? Why should this be so?

A power to get information should carry, as an incident, the power to do everything necessary to secure it.

In Lewis Publishing Co. *v.* Morgan, 229 U. S. 314, this court said:

> The question therefore is only this, are the conditions which were exacted incidental to the power exerted. * * * We say this is the question, since necessarily if the power exists to legislate * * * the right to exercise that power *carries with it the authority to do those things which are incidental to the power itself, or which are plainly necessary to make effective the principal authority when exerted.* In other words, from this point of view, the illuminating rule announced in McCulloch *v.* Maryland and Gibbons *v.* Ogden governs here *as it does in every other case where an exertion of power under the constitution comes under consideration. The ultimate and narrow question therefore is, Are the requirements* * * * *in question incidental to the purpose intended to be secured by the second class classification?*

The "*securing*" is related to the regulation of the vice and the treaty. *That is the essential*, and the *only* essential, for otherwise there would be no power to get it at all. Such was the rule of the Keller case. Being so related, *every other power* of the Government *may* be *called* into *exercise* to *secure* the information. As this court said in the B. & O. R. R. Co. case, supra (622):

> To enable the Commission *properly* to *perform its duty to enforce the law* it *is necessary* that it should have *full information* as to the hours of service exacted of the *employees who are subject to the provisions of the statute,*

> and the *requirements to which we have referred are appropriate for that purpose* and are *comprehended within the power of the Commission.*

In the above case the employee was subject to the act, and the information was required of the employer. Here the alien prostitute employee may be deported under the immigration act *at any time after* entry, and so remains subject to the control of Congress.

Where the information may be lodged, or *who* may be its custodian are non-essentials—provided only it be locally within reach of the governmental authority. The power to *get* it will not be rendered impotent by construing it as merely a power to *receive*. Every person, whether citizen or alien, within the jurisdiction of the United States is subject to the proper control of Congress, provided his constitutional rights are not impaired. What constitutional right of Portale could be impaired by compelling him to furnish such a statement? None can be referred to save those guaranteed by the Fourth and Fifth Amendments. As to the latter (self-incrimination), section 6 of the act affords by its terms complete immunity. As to the former, the question is disposed of by the court in B. & O. R. R. Co. case, *supra* (622), thus:

> There is the final objection that to compel the disclosure by these reports of violations of the law, is contrary to the fourth and fifth amendments of the Constitution of the United States.

> The order of the commission is suitably specific and reasonable, and *there is not the faintest semblance of an unreasonable* search and seizure. The fourth amendment *has no application.*

Of course, were Congress to address such a requirement to merchants, because occasionally patronized by such women, or to owners of car lines whereon they rode, the law would be unreasonable because of the improbability that the information would be lodged where sought. The relation to the women would be too casual. But those who employ them or keep them in houses of ill-fame, where daily they ply their trade, are so related to these women that they may reasonably be required to furnish their knowledge or information, if any they have gained, and to this extent contribute to the performance of its proper functions by the General Government.

The fact that Portale was not directly concerned in the importation, as we have seen, is of no moment. This feature has been disposed of by this court in the case of *Int. Com. Comm.* v. *Goodrich Transit Company*, 224 U. S. 194. In that case (205) it was contended that the Commission—

> exceeded its authority in so far as the power was asserted to examine into the affairs of the companies not related to their joint rail and water business and *having reference, as it was alleged, to their domestic business or interstate business not within the terms of the act.*

Of this claim the court said (p. 211):

> If the Commission is to successfully perform its duties in respect to reasonable rates, undue discriminations and favoritism, it must be informed as to the business of the carriers by a system of accounting which will not permit the possible concealment of forbidden practices in accounts which it is not permitted to see and concerning which it can require no information. It is a mistake to suppose that the requiring of information concerning the business methods of such corporations, as shown in their accounts, is a regulation of business not within the jurisdiction of the Commission, as seems to be argued for the complainants. The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is *not* to *enable* it to *regulate* the affairs of the corporations *not* within its *jurisdiction*, but to be *informed* concerning the *business methods* of the corporations subject to the act *that* it *may properly regulate* such *matters* as *are really within* its *jurisdiction*. Further, the *requiring* of *information concerning* a *business* is *not regulation* of *that business*.
>
> * * * * *
>
> We think the act should be given a practical construction, and one which will enable the Commission to perform the duties required of it by Congress, and, conceding for this purpose that the regulating power of the Commission is limited so far as rates are concerned to joint rates of the character named in Section 1, it is still essential that to enable the Commission

to perform its required duties, even with respect to such rates, and to make reports to Congress of the business of carriers subject to the terms of the act, it should be informed as to the matters contained in the report. Congress, in Sec. 20, has authorized the Commission to inquire as to the business which the carrier does and to require the keeping of uniform accounts, in order that the Commission may know just how the business is carried on, with a view to regulating that which is confessedly within its power.

It is contended that this construction of the statute enables the Commission *not only to regulate* the interstate business, but *as well the wholly intrastate* business of the complaining corporations, and *is, therefore, beyond the power of Congress*. Such cases are cited and relied upon by complainants as the *Employers Liability Cases*, 207 U. S. 463, and *Illinois Central R. R. Co.* v. *McKendree*, 203 U. S. 514. In those cases acts of Congress and orders of executive departments were held void because they undertook to regulate matters wholly intrastate, as distinguished from those matters of an interstate character and within the legislative power of Congress. And what we have already said as to the character of these orders is enough to indicate that in our opinion they are not regulations of intrastate commerce. (Pp. 213–214.)

See also *Kansas City So. Ry.* v. *United States*, 231 U. S. 423.

Information appropriate to aid in enforcing law is secured compulsorily under statutes or regulations

made thereunder in the exercise of many other powers of the general government. Instances may be found in the various Revenue Acts, the Bankruptcy Act, the Immigration Act, and many acts bedded upon the commerce power. The provision for withholding income tax at its source and certain provisions of the Bankruptcy Act are especially noteworthy as imposing duties on third persons not directly concerned in the matter which is the immediate subject of the exercise of the power. Material extracts from some of these statutes and cases decided under them will be made in an appendix to this brief. To deny such a power to Congress might seriously embarrass the Government in many of its operations.

## CONCLUSION.

The penal provisions of section 6 of the act should be read as applying to one merely "keeping" (etc.) the prostitute after her entry. Thus read (because no attempt is made to punish the keeping, but merely to enforce the furnishing of information relevant to the intelligent exercise of a federal power), the section is constitutional; the indictment charged a violation of the statute, and the court below erred in holding otherwise.

It is respectfully submitted that its judgment should be reversed and the cause remanded for further proceedings.

WM. WALLACE, JR.,
*Assistant Attorney General.*

JULY, 1914.

## APPENDIX.

**Statutes exemplifying the exercise by Congress of its power to compel the furnishing by individuals, companies, and corporations of information concerning subjects falling within Federal jurisdiction. (Statutes requiring report from those only who are directly concerned in the business, or from their employees or officers, are not quoted at length.)**

### INTERNAL REVENUE.

Section 3307, Revised Statutes. Distillers' returns of materials used and production to collector.

Section 3308, Revised Statutes. Distillers' returns of the number of barrels distilled.

Section 3173, Revised Statutes (as amended by sec. 34, act of Aug. 28, 1894, 28 Stat. 509). Annual returns of persons liable to any duty or special or other tax.

Section 3337, Revised Statutes. As to brewers.

Section 3358, Revised Statutes. As to manufacturers of tobacco or snuff.

Section 3360, Revised Statutes. Section 35 of the act of August 5, 1909 (36 Stat. 11, 111), (retail dealers in leaf tobacco, "to furnish a true and correct statement * * * of all his sales of leaf tobacco," etc.).

Section 3390, Revised Statutes. As to manufacturers of cigars.

Section 3414, Revised Statutes. As to banks and bankers.

Section 3303, Revised Statutes. "Every person who makes or distills spirits, or owns any still, boiler,

or other vessel used for the purpose of distilling spirits, or *who has such still, boiler, or other vessel so used under his superintendence, either as agent or owner*, or *who uses any such still, boiler, or other vessel*" to keep in a book "a true and exact entry of the kind of materials, and the quantity in pounds, bushels, or gallons purchased by him for the production of spirits, from whom and when purchased, and by what conveyance delivered at said distillery, the amount paid therefor, the kind and quantity of fuel purchased for use in the distillery, and from whom purchased, the amount paid for ice or water for use in the distillery, the repairs placed on said distillery or distilling apparatus, the cost thereof, and by whom and when made, and of the name and residence of each person employed in or about the distillery, and in what capacity employed," etc. (Section 3305 provides a penalty.)

Section 4353 requires the *master* of every vessel under 20 tons of burden licensed for carrying on the coasting trade and destined for any district of the United States to a district other than a district in the same or an adjoining State, on the seacoast or on a navigable river, to *deliver to the collector*, etc., previous to her departure *duplicate manifests of the whole cargo on board* such vessel; or, if there is no cargo on board, he *shall so certify;* and if there *are any distilled spirits* or *merchandise of foreign growth or manufacture on board*, other than what may by the collector be deemed sufficient for sea stores, he *shall specify* in such manifests the *marks and numbers* of every cask, bag, box, chest, or package containing the same, with the name and *place of residence of every shipper* and consignee of such distilled spirits or merchandise of foreign

growth or manufacture and the *quantity shipped by* and *to each*. (Section 4354 provides a penalty.)

Section 4349 is similar in its requirements to section 4353, but applies only to "vessels trading between neighboring districts." (Section 4350 provides a penalty.)

Section 4351 requires the masters of certain vessels upon arriving in port to deliver to the collector, etc., a manifest of cargo. (Section 4352 provides a penalty.)

Sections 4367 and 4368 require the masters of foreign vessels to deliver to the collector, etc., manifests of cargo. (Section 4369 provides a penalty.)

Section 8 of the act of April 12, 1902 (32 Stat. 97, 98), *required every executor, administrator*, or *trustee* having in charge *certain described estates*, to "*render* to the said collector or deputy collector a *schedule, list*, or *statement*, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, * * * which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest."

Failure to comply with these requirements subjects the executor, administrator, or trustee to a penalty. (Treated as valid legislation in *Hertz* v. *Woodman*, 218 U. S. 205, 214–6, 220.)

As to returns required by corporation tax act of 1909 (36 Stat. 112, 114), see *Flint* v. *Stone Tracy Co.*, 220 U. S. 108, 174–176. Such returns are required whether there be a tax liability or not. (*United States* v. *Military Const. Co.*, 204 Fed. 153; *United States* v. *Acorn Roofing Co.*, 204 Fed. 157.)

Paragraphs D and E of Section II of the tariff act of 1913 (38 Stat. 168–169) as to withholding income at source:

> *Guardians, trustees, executors, administrators, agents, receivers, conservators,* and *all persons,* corporations, or associations *acting in any fiduciary capacity,* shall *make and render a return* of the net income of the person for whom they act, subject to this tax, *coming into their custody or control and management,* and be subject to all the provisions of this section which apply to individuals.
>
> * * * All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, *trustees acting* in *any trust capacity, executors, administrators, agents, receivers, conservators,* employers, and all officers and employees of the United States having the *control, receipt, custody, disposal,* or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, *who are required* to make *and render a return in behalf of another, as provided herein,* to the collector of his, her, or its district, are *hereby authorized and required to deduct* and *withhold* from *such annual gains, profits,* and *income such sum* as

will be sufficient to pay the normal tax imposed thereon by this section *and shall pay to the officer of the United States Government* authorized to receive the same; and they are each hereby made personally liable for such tax. * * *

Section 5 of the act of June 6, 1896 (29 Stat. 253, 254), requires every manufacturer of filled cheese to file with the Collector of Internal Revenue "such notices, inventories, and bonds," and to "keep such books and render such returns of materials and products," to "put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may by regulation require." A violation is punishable.

Section 6 of the act of May 9, 1902 (32 Stat. 193, 197), requires wholesale dealers in oleomargarine, process, renovated, or adulterated butter to "keep such books and render such returns in relation thereto as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require." A violation is punishable.

IMMIGRATION.

Section 8 of the act of July 5, 1884 (23 Stat. 115, 117), requires the master of any vessel arriving in the United States from any foreign port or place to furnish the collector with a "*list of all Chinese passengers taken on board* his vessel at any foreign port or place and all such passengers on board the vessel at that time." For failure to furnish this list is punishable.

Act of February 20, 1907 (34 Stat. 898).

SEC. 12. That upon the arrival of any alien by water at any port within the United States it shall be the duty of *the master* or *commanding officer* of the steamer, sailing or other vessel having said alien on board to deliver to the immigration officers at the port of arrival lists or manifests made at the time and and place of embarkation of such alien on board such steamer or vessel, which shall, in answer to questions at the top of said list, state as to each alien the full name, age, and sex; whether married or single; the calling or occupation; whether able to read or write; the nationality; the race; the last residence; the name and address of the nearest relative in the country from which the alien came; the seaport for landing in the United States; the final destination, if any, beyond the port of landing; whether having a ticket through to such final destination; whether the alien has paid his own passage or whether it has been paid by any other person or by any corporation, society, municipality, or government, and if so, by whom; whether in possession of fifty dollars, and if less, how much; whether going to join a relative or friend, and if so, what relative or friend, and his or her name and complete address; whether ever before in the United States, and if so, when and where; whether ever in prison or almshouse or an institution or hospital for the care and treatment of the insane or supported by charity; whether a polygamist; whether an anarchist; whether coming by

reason of any offer, solicitation, promise, or agreement, express or implied, to perform labor in the United States, and what is the alien's condition of health, mental and physical, and whether deformed or crippled, and if so, for how long and from what cause; that it shall further be the duty of the master or commanding officer of every vessel taking alien passengers out of the United States, from any port thereof, to file before departure therefrom with the collector of customs of such port a complete list of all such alien passengers taken on board. * * *

Sections 13 and 14 of the same act require further information concerning the alien.

Section 15 of the same act provides a penalty of $10 in the case of each alien concerning whom the required information is not furnished. The validity of this legislation was assumed in *United States* v. *Williams*, 193 Fed. 229, 231; *United States* v. *Fielding*, 175 Fed. 290, 291; *United States* v. *Coombs* (2d C. C. A.), 200 Fed. 400, 401, 402.

BANKRUPTCY.

Act of July 1, 1898 (30 Stat. 551), as amended by act of Feb. 5, 1903 (32 Stat. 798).

Sec. 21. Evidence. A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by *order require any designated person*, including the bankrupt and his wife, to *appear in court* or *before a referee* or the judge of any State court, to be *examined concerning the acts, conduct*, or *property* of a *bankrupt* whose estate is in process of administration under this act: Provided, That the

wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt.

In re *Iron Clad Mfg. Co.*, 201 Fed. 66.
In re *Seligman*, 192 Fed. 750.
In re *Bryant*, 188 Fed. 530.
In re *Robinson*, 179 Fed. 724.

INTERSTATE COMMERCE.

Section 20. Interstate commerce act of February 4, 1887, as amended (1911 Supp. Comp. Stat. 1304–1305). Annual, monthly, and special reports from common carriers and owners of railroads, and answers by carriers to questions of the commission; contents of reports.

*Int. Com. Comm.* v. *Goodrich Transit Co.*, 224 U. S. 194.

*Balt. & Ohio R. R.* v. *Int. Com. Comm.*, 221 U. S. 612.

Section 1 of the act of May 6, 1910, (36 Stat. 350, 351), requires the "general manager, superintendent, or other proper officer of every common carrier engaged in interstate or foreign commerce by railroad" to make a monthly report to the Interstate Commerce Commission "of all collisions, derailments, or other accidents resulting in injury to persons, equipment or roadbed arising from the operation of such railroad." A violation is punishable.

Section 8 of the act of February 17, 1911 (36 Stat. 913, 916), requires "that in the case of accidents resulting from failure for any cause of a locomotive boiler or its appurtenances, resulting in serious injury or death to one or more persons, a statement forth-

with must be made in writing of the fact of such accident, by the carrier owning or operating said locomotive, to the chief inspector." A violation is punishable.

CENSUS.

Section 23 of the act of July 2, 1909 (36 Stat. 1, 8), makes it the duty of *all persons* over *twenty-one years* of age when requested by the Director of the Census, or by any supervisor, enumerator, or special agent, or other employee of the Census Office, acting under the instructions of the said Director, "to *answer correctly*, to the *best of their knowledge, all questions on the census schedules* applying to themselves and to the family to which they belong or are related, and to the *farm or farms* of *which they or their* families are the occupants." Refusal or neglect to answer subjects party to a fine.

Section 24 of the same act makes it the duty of "every owner, president, treasurer, secretary, director, or other officer or agent of any manufacturing establishment, mine, quarry, or other establishment of productive industry, whether conducted as a corporation, firm, limited liability company, or by private individuals, when requested by the Director of the Census * * * to answer completely and correctly to the best of his knowledge all questions on any census schedule applying to such establishment." Refusal or neglect to answer the questions is punishable.

Section 3 of the act of April 30, 1912 (37 Stat. 106, 107), requires that all persons subject to the provisions of this act "within ten days after the first day of October and first day of April in each year, make written report to the Director of the Census the number of pounds of each of the several types of leaf

tobacco owned by him as of the said dates, respectively." Failure to make the report subjects the party to a fine.

Section 4 of the act of July 22, 1912 (37 Stat. 198), declares "that it shall be the duty of every owner, president, treasurer, secretary, director, or other officer or agent of any cotton ginnery, manufacturing establishment, warehouse, or other place where cotton is ginned, manufactured, or stored, whether conducted as a corporation, firm, limited partnership, or by individuals, when requested by the Director of the Census * * * to furnish completely and correctly, to the best of his knowledge, all of the information concerning the quantity of cotton ginned, consumed, or on hand, and the number of cotton consuming spindles." Refusal or neglect to furnish the information subjects the party to a fine or imprisonment or both.

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